

Commission Response to criticism of House Bill 1054

House Bill 1054, sponsored by Delegate David B. Albo, was introduced as part of the Title 18.2 revisions supported by the Virginia State Crime Commission. This report is written to counter recent criticisms of the bill by the National Association to PROTECT Children. This report is intended to counter erroneous legal interpretations and misunderstanding of Virginia law as it relates to the case of Lawrence v. Texas, 123 S. Ct. 2472 (2003) and the introduction of House Bill 1054.

1. What the bill accomplishes:

The bill ensures that even if Virginia's sodomy statute is declared unconstitutional, as a result of the Lawrence case, it will still be a crime to commit sodomy with a prostitute, in public, or with a minor.

The bill raises the penalty from a misdemeanor to a Class 6 felony for any adult, who is in a custodial or supervisory relationship with a minor, to have sexual relations with that minor. (Under current Virginia law, it could be argued that the penalty for a teacher or coach to have consensual intercourse with a 16 year old student would only be a Class 1 misdemeanor. This bill seeks to eliminate that argument).

2. What the bill is NOT doing:

“PROTECT” erroneously claims that HB 1054 lowers the punishment for “sexual intercourse with a child age 0-18” to a Class 6 felony. PROTECT is wrong. House Bill 1054 does not change any of the other relevant *Virginia Code* provisions that a prosecutor would make use of in prosecuting a sex offender. Including:

- If an adult, **including a parent**, had sexual intercourse with a child, under the age of 13, he or she would be charged with rape, *Va. Code* § 18.2-61, which carries a penalty of 5 years to life in prison.
- If an adult had consensual sexual intercourse with a child between the ages of 13 and 15, the person would be charged with carnal knowledge, *Va. Code* § 18.2-63, which carries a penalty of 2 to 10 years.
- If an adult had sexual intercourse with a child between the ages of 13 and 15, and the act was carried out through the use of force, the person would be charged with rape, *Va. Code* § 18.2-61, which carries a penalty of 5 years to life.
- If a parent had consensual intercourse with his or her child, he would be charged with incest, *Va. Code* § 18.2-366, which carries either 1 to 10 years, or 5 to 20 years, depending upon the age of the victim.

HB 1054 also does not lower any of the existing penalties for adults who sodomize children.

Finally, HB 1054 does not make sexual intercourse with a minor being held in a juvenile detention facility a Class 1 misdemeanor. What HB 1054 does accomplish is to make any sexual activity that takes place in a correctional facility, even if consensual, against the law. This applies to activity between adults as well as juveniles, and was a concept recommended by the Attorney General's office.

In summary, HB 1054 provides additional weapons for prosecutors to use against sex offenders and makes clear that if an adult abuses his or her position of supervisory authority over a juvenile, such conduct is a felony, regardless of the age of the juvenile.

For further legal clarification on HB 1054, please contact the Virginia State Crime Commission.